

PRACTICE GUIDELINES

Attorneys appointed by the juvenile court or retained by a party are expected to zealously and independently represent clients at every stage of dependency proceedings, unless relieved by the court. The following description of counsel's responsibilities and actions is presented as an outline of what would constitute thorough and professional representation. An individual case would rarely require all of the activities enumerated; underlying each activity is the expectation that the attorney will possess knowledge and understanding of current statutes, rules of court, relevant case law, and inherent policies.

I Maintain ongoing client contact

- A. Meet with the client prior to court hearings;
- B. Personally explain to the client, in a developmentally appropriate manner, what the court is deciding, what alternatives might be available; elicit the client's preferences, advise the client; and discuss what will happen next;
- C. Observe the parent's interaction with child/children, after obtaining permission from counsel for the parent(s);
- D. Contact the client in the event of an emergency or significant case-related event; and
- E. Be accessible to the client through office hours, telephone/voice mail, fax, e-mail or home/school/office visits.

IA. ADDITIONAL DUTIES OF CHILD'S COUNSEL:

- a) Visit the child at each new placement, whenever feasible;
- b) Personally visit with the child in a non-court setting prior to court hearings; and
- c) Observe the child's interaction with parents or other caretakers.

IB. ADDITIONAL DUTIES OF PARENT'S COUNSEL:

- a) Investigate and evaluate the parent's environment (home, relative home, shelter, etc.); and
- b) Be alert to any special needs of the parent related to his or her ability to understand and participate in the court process, including whether or not a guardian ad litem is necessary.

II. Conduct thorough, continuing, and independent investigations and interviews necessary to ascertain the facts, which may include, but is not limited to:

- A. Obtaining any required authorizations for release of information;
- B. Reviewing the client's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, and school records, and taking any additional steps to gain access to those records that may not be in existing or open files;
- C. Reviewing court file and case-related records of the social services agency and other service providers;
- D. Interviewing school personnel, caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians, and law enforcement officers;
- E. Contacting and meeting with child welfare workers who are presently or were previously

- F. interacting with the client or other family members, including the child welfare worker who will provide the next report to the court;
- G. Contacting counsel for other parties;
- H. Contacting any non-attorney guardian ad litem or Court Appointed Special Advocates (CASA) appointed in the case to obtain background information;
- I. If additional information suggests, contacting other professionals and lay witnesses who may identify alternative potential placements and services;
- J. Eliciting the client's preferences, advising the client, and giving guidance in a developmentally appropriate manner (regarding placement, visitation/contact, or agency recommendations);
- K. Reviewing photographs, video or audio tapes, and other relevant evidence; and
- L. Attending treatment and placement conferences and placement staffings.

IIA. ADDITIONAL DUTIES OF CHILD'S COUNSEL:

- a) Contact and meet with parents/legal guardians of child(ren), with permission of their attorney;
- b) Upon being appointed by the court, investigate the interests of the child beyond the scope of the proceedings and report to the court, subject to any legal privileges, any other interests of the child that may need to be protected by the institution of other administrative or procedural hearings. These interests include, but are not limited to:
 - 1. School/education issues;
 - 2. Special education;
 - 3. Child support;
 - 4. Personal injury;
 - 5. Mental health proceedings; and
 - 6. Immigration.
- c) Accompany the child to interviews with law enforcement and the district attorney; and
- d) Attend Welfare and Institutions Code section 241.1 hearings if the child is a dependent with a delinquency petition pending; if the child is a ward and the subject of a new dependency petition; advocate for dependency jurisdiction as appropriate.

IIB. ADDITIONAL DUTIES OF PARENT'S COUNSEL:

- a) Contact and meet with counsel for the child to determine child's wishes versus parent's interpretation of child's wishes;
- b) Emphasize what is expected of the parent and the consequences for failing to complete the terms of the case plan; and
- c) Stress the need for the parent to communicate to counsel any questions about the case plan or problems in fulfilling its requirements.

III. File pleadings, including petitions, motions, responses, or objections, as necessary to represent the client

- A. Requested relief may include, but is not limited to:

1. Obtaining necessary services for the family;
2. A mental or physical examination of the client;
3. A parenting, custody or visitation evaluation of the client;
4. An increase, decrease, or termination of contact or visitation;
5. Requesting, restraining, or enjoining a change of placement;
6. Contempt for non-compliance with a court-order;
7. Termination of a child-parent relationship;
8. The administration of psychotropic medications;
9. Restraining orders;
10. A protective order concerning the client's privileged communication or tangible property; and/or
11. Dismissal of petitions or motions.

IV. Seek appropriate services (by court order if necessary) to access entitlements, to protect the client's interest, and to advocate for a comprehensive service plan

- A. Services may include, but are not limited to:
 1. Family preservation and related prevention and reunification services;
 2. Sibling and family visitation;
 3. Child support;
 4. Domestic violence prevention and treatment;
 5. Medical and mental health care;
 6. Drug and alcohol treatment;
 7. Parenting education;
 8. Transitional and independent living services and plan;
 9. Adoption services;
 10. Education;
 11. Recreational or social services;
 12. Housing;
 13. Long term foster care; (parent's counsel may advocate for LTP for child(ren) in lieu of adoption/guardianship); and
 14. Post-adoption agreement referral.
- B. Agencies (i.e. school districts, housing authority, etc.) may be joined in the dependency action if there are problems with the services being provided;
- C. Counsel should request services even if no hearing is scheduled. If a direct informal request(s) to treatment providers is unsuccessful, counsel should file a motion related to necessary services.
- D. Counsel should advocate for services for clients with special needs, such as physical, mental, or developmental disabilities
 1. These services may include, but are not limited to:
 - a. Special education and related services;
 - b. Supplemental security income (SSI) to help support needed services;
 - c. Therapeutic foster and group home care;
 - d. Residential/in-patient and outpatient psychiatric treatment; and

- e. Regional center services.

V. Negotiate settlements/mediations

- A. Initiate and participate in settlement negotiations to seek an expeditious resolution of the case, avoiding continuances and delays; and
- B. Attempt to settle any contested issues by initiating and participating in settlement negotiations, including mediation.

VI. Hearings

- A. Attend and participate in all hearings related to the dependency matter;
- B. Report to the court on the child's adjustment to placement, social services' and the parent's compliance with prior court orders and treatment plans, and child/parent interactions during visitation and other contact;
- C. Present and cross-examine witnesses, offer exhibits, and provide independent evidence;
- D. Prepare and submit trial briefs prior to contested hearings;
- E. Be prepared to endorse, challenge, and amplify any reports submitted to the court;
- F. Ensure that the record reflects objections, reasoning, waivers, and the evidence upon which the court relies, and that it preserves issues for appeal;
- G. If a continuance is sought, prepare a written motion under Welfare and Institutions Code section 352; and
- H. At the conclusion of the hearing, if appropriate:
 - 1. Make a closing argument and provide proposed findings of fact and conclusions of law;
 - 2. Request orders that are clear, specific, and where appropriate, include a timeline for assessment, services, placement, and evaluation of the child and/or family;
 - 3. Ensure that a written order is entered; and
 - 4. Review all written orders to advocate for the orders to conform to the court's verbal orders and statutorily required findings and notices.

VI A. ADDITIONAL DUTIES OF CHILD'S COUNSEL:

- I. Child has a statutory right to be present at the hearing:
 - a) A child's presence at a hearing should be based upon individual determination of the child's willingness to attend, age, and maturity;
 - b) A child's presence at a hearing should be based upon consultation with the child, therapist, caretaker, or any other knowledgeable adult in determining the effect of the child being present at the hearing; and
 - c) Consider the court facilities and how children attending hearings are accommodated.
- II. Determination of calling the child as a witness:
 - a) Consider the child's need or desire to testify;
 - b) Weigh the likely consequences of having the child testify;
 - c) Determine the necessity of the child's direct testimony;
 - d) Determine if there is any other evidence or hearsay exceptions that may eliminate the need for direct testimony;

- e) Determine the child's developmental ability to provide direct testimony and withstand possible cross-examination; and
- f) Consider available alternatives to in-court testimony as specified in Welfare and Institutions Code section 355.

III. Child as a witness:

- a) Prepare the child to testify:
 - 1) Familiarize the child with the courtroom, court procedures, and what to expect during direct and cross-examination;
 - 2) Make an effort to advocate for your client (including making objections) that testifying will cause minimum harm to the child;
 - 3) If possible, conduct the direct testimony of the child; and
 - 4) Object to questions that are not developmentally appropriate and/or not phrased in a syntactically and linguistically appropriate manner.
- b) Challenges to child's testimony/statements:
 - 1) If necessary, prepare expert testimony to establish competency or reliability or to rehabilitate any impeachment.

VII. Appeals and Writs

A. Appeal:

- 1. Consider and discuss with the client, as developmentally appropriate, the right to appeal, the ramifications of an appeal (including delaying implementation of services or placement), and the likely result of an appeal;
- 2. If, after a thorough discussion, the client wishes to appeal, file a notice of appeal (JV-800 or JV-800S);
- 3. Seek appropriate orders and extraordinary writs necessary to protect the interests of the client during the pendency of the appeal;
- 4. If permitted by the Court of Appeal, participate in the appeal, even if filed by another attorney, unless discharged;
- 5. Keep the client informed of the progress of the appeal, to the extent possible; and
- 6. Once a decision is rendered, explain the result to the client, and discuss any additional appellate remedies that may be available as well as what will happen next in juvenile court.

B. Withdrawal:

- 1. If the appeal would be frivolous or attorney lacks the necessary experience or expertise, attorney should notify the court and seek to be discharged or replaced.

C. Writ

- 1. Consider the writ procedure even if a hearing under Welfare and Institutions Code section 366.26 is not set, if an appeal will not lie, or if the circumstances require prompt action.
- 2. Rule 39.1B Writ
 - a. If reunification services are not offered or are terminated, and a

Welfare and Institutions Code section 366.26 hearing is set, consider and discuss with the client writ rights and procedures under rule 39.1B of the California Rules of Court;

- b. If the writ is to be sought, file the Notice of Intent (JV-820) once the adult client has signed it;
- c. If the adult client is not available to sign the notice, request the Court of Appeal to permit counsel to sign on behalf of the absent client.
- d. If representing the child, sign and file JV-820 on behalf of the child;
- e. If inexperienced in preparing writs, consult with, or seek assistance from, colleagues familiar with the procedures and requirements;
- f. Prepare and submit the writ petition;
- g. Attend any scheduled oral argument; and
- h. Once a decision is rendered, explain the result to the client, and discuss any additional remedies that may be available as well as what will happen next in the juvenile court.

VIII. Cessation of Representation:

- A. Discuss the end of legal representation and what contacts, if any, the client and the attorney will continue to have.

